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OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Financial Audit Division Report

Department of Transportation
Special Review: Airplane Purchase



November 22, 2005

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Financial Audit Division

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November 22, 2005

Members of the Legislative Audit Commission

Members of the Senate Transportation Committee

The Honorable Carol Molnau, Lieutenant Governor and Commissioner
Minnesota Department of Transportation

Commissioner Dana Badgerow
Minnesota Department of Administration

Senator Wes Skoglund
Senator Dennis Fredrickson
Senator Thomas Bakk
Senator Dallas Sams
Senator LeRoy Stumpf

At the request of the senators listed above, the Office of the Legislative Auditor (OLA) reviewed the procurement process used by the Office of Aeronautics in the Minnesota Department of Transportation (MnDOT) to purchase an airplane in July 2005. The request followed allegations that Aeronautics officials “rigged” the bid specifications to exclude airplanes manufactured by Cirrus Design Corporation (Cirrus), an airplane manufacturing company headquartered in Duluth, Minnesota. The allegations were made by Bill King, Vice President of Business Administration at Cirrus.

Senate Transportation Committee Hearing

As we were considering the request for a review by OLA, the Senate Transportation Committee held a hearing on the allegations. During the hearing, officials from MnDOT’s Office of Aeronautics and the state’s Department of Administration described the procurement process that was used to purchase the airplane, and Mr. King repeated his allegations that state officials acted improperly.

Commissioner of Transportation (and Lieutenant Governor) Carol Molnau expressed the view that the controversy was caused by a misunderstanding. She said that in the spring of 2005, some officials at MnDOT’s Office of Aeronautics had pursued buying a Cirrus airplane as an addition to their complement of airplanes. The commissioner said she rejected the proposal because she did not think it was financially prudent for the department to purchase an additional airplane, though she did authorize the purchase of a replacement for one of the

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department's two Beechcraft Bonanza airplanes. She also said it was her understanding that the Beechcraft Bonanza was the type of plane the professional pilots and aviation staff strongly recommended to meet the state's needs in replacing the aging Bonanza fleet.

Commissioner Molnau also indicated that she directed the Office of Aeronautics to use a competitive bidding process to replace the Beechcraft Bonanza, rather than make a single source purchase. The bid specifications, which detailed the airplane the state wanted to purchase, were written by Mr. Larry Myking, Director of Aviation Operations in the Office of Aeronautics. He acknowledged that he wrote the bid specifications to obtain another Beechcraft Bonanza, and said he did not consider a Cirrus airplane suitable as a replacement for the department's 1978 Bonanza. The bid information was sent to 12 companies, but the state received only one bid—from Elliot Aviation, which is the regional distributor for Beechcraft airplanes.

In addition, Department of Administration officials discussed the distribution of bid information to potential bidders and acknowledged some errors. Commissioner of Administration Dana Badgerow apologized "on behalf of the administration" to Cirrus and Mr. King for all of the miscommunication and errors that occurred in the airplane procurement process.

OLA Follow-up Review and Conclusions

After the Senate Transportation Committee hearing, OLA was asked to proceed with a review. In response, we obtained additional documents from MnDOT and took sworn statements from three key officials in the Office of Aeronautics involved in the airplane procurement process: Ray Rought, Director of the Office of Aeronautics; Steven Hurvitz, Assistant to the Director; and Larry Myking, Director of Aviation Operations. We also talked with Mr. King, a vice president of Cirrus Design, and Mr. Floyd Gutowski, a regional sales manager for Cirrus. In addition, we talked with Brenda Willard, Acquisitions Manager at the Department of Administration.

All of the testimony we obtained from officials at the Office of Aeronautics is consistent with the testimony state officials presented to the Senate Transportation Committee, although it provided us with more details and insight regarding the procurement process. We used the testimony presented to both the Senate Transportation Committee and OLA to reach our conclusions about the procurement process.

In summary, we concluded that the controversy was caused by a misunderstanding created largely by officials in MnDOT's Office of Aeronautics. Initially, officials at the Office of Aeronautics created the impression that the state was seriously interested in purchasing a Cirrus airplane in 2005. When that plan changed, however, they did not clearly communicate their new intention to representatives of Cirrus. They compounded the misunderstanding when they used a competitive bidding process to request bids for an airplane, but wrote product specifications so that only a Beechcraft Bonanza would qualify. State procurement laws do not address the specific requirements for competitive bidding documents. However, the Department of Administration's purchasing procedures recommend identifying, when possible,

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a brand name or other specification already on the market with the stipulation that the bid allows for an “approved equal.” In this case, the use of specifications that clearly described a Beechcraft Bonanza airplane, without naming the airplane, caused Cirrus representatives to suspect that the procurement process was being improperly manipulated. Cirrus representatives were given further reason for suspicion by the way bid information was distributed.

Our three specific conclusions are as follows:

1. The controversy was caused by a misunderstanding created largely by officials in MnDOT’s Office of Aeronautics.

In the spring of 2005, officials at the Office of Aeronautics clearly created the impression that the state was seriously interested in purchasing an airplane manufactured by Cirrus. The decision to pursue the purchase of a Cirrus airplane was made by Ray Rought, Director of the Office of Aeronautics. He told us:

Cirrus is a Minnesota company. And, I’ve been around since Cirrus has been here, I know the people, I talk with the people, continually they’re asking when we’re going to buy one, and I keep telling them “when the time is right, and we can buy one.” But you know, in this business, the time has to be right before you can do that. And the money became available, so rather than carrying it over...we elected to find a way to use the, we’d use the Cirrus. I’m a pilot, we have several pilots that don’t normally or aren’t comfortable in the Bonanza. I’ve flown the Bonanza but I’m not always that current in it. So, a different airplane, a less complex airplane perhaps, would be good for me as well as some other people on my staff who could then fly out to meetings and such, without having to have a pilot go along. And it would extend the life a little bit of our Bonanzas...[and] give us also an opportunity to evaluate the Cirrus....We weren’t looking to replace the Bonanzas at that time, we were looking to add something and to, in my mind, we were really evaluating a Cirrus.

After deciding to pursue the purchase of a Cirrus airplane, Mr. Rought turned negotiations with Cirrus over to Steve Hurvitz, his assistant. Mr. Hurvitz’s principal contact at Cirrus was Floyd Gutowski, a regional sales manager. Mr. Hurvitz told us that he had considerable contact with Mr. Gutowski, but expressly told him that the purchase would have to be approved by higher authorities in MnDOT.

On June 21, 2005, the Office of Aeronautics sought approval to purchase a Cirrus SR22-GTS airplane. Since Cirrus airplanes are only sold directly from the company and not through dealers, the request was to authorize a single source purchase. The request was rejected by Commissioner Molnau on June 29, 2005. According to her testimony at the Senate Transportation Commission—which was confirmed by the testimony we received from Office of Aeronautics’ officials—Commissioner Molnau’s action was for budgetary reasons; she did not think it was financially prudent for the state to add another airplane to its complement. The commissioner did, however, approve the office replacing one of its Beechcraft airplanes as long as the replacement was purchased through a competitive procurement process.

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The process to replace a Beechcraft Bonanza was assigned to Larry Myking, Director of Aviation Operations at the Office of Aeronautics. In his testimony to the Senate and to us, Mr. Myking was clear that his intent was to replace the 1978 Beechcraft Bonanza with a Beechcraft Bonanza. In answering questions before the Senate Transportation Committee, Larry Myking said the following:

Mr. Myking: I wasn't trying to replace this airplane [a 1978 Beechcraft Bonanza] with the Cirrus. That Cirrus clearly didn't meet our needs and was not thought to be a replacement aircraft. So, I didn't write it trying to buy a Cirrus.

Senator Skoglund: What were you trying to replace it with?

Mr. Myking: A Bonanza, or something similar.

Senator Skoglund: Ok, that's what I thought, a Bonanza. Ok, thank you.

Senator Murphy: And... you wanted to replace a Bonanza with a Bonanza?

Mr. Myking: Yes.

Mr. Myking reiterated this point in answering our questions. He said:

On June 29, the Lieutenant Governor made the decision not to increase our fleet, but did accept the premise that it was time to replace one of the working Bonanzas. So that's when my involvement really started, was on June 29, because then we weren't buying the Cirrus, we were going to replace one of the Bonanzas.

Ray Rought made essentially the same point in his testimony to us. Answering questions about how the bid specifications were handled after the commissioner rejected the request to approve a single source purchase of a Cirrus airplane, he said:

Rought: ... Larry was then the one who was putting specs together for this one. Steve put it together for the Cirrus, Larry was putting it together on the Bonanza. Larry had been involved on the bidding process when we bought the Bonanzas 27 years ago.

Nobles: And what I want to be clear about, because again I think [it is] so much a part of the controversy, when ... the decision is made, we're not going to do the sole source purchase of the Cirrus, we're going to replace the Bonanza, immediately it seems to me, in Larry Myking's mind, it is clear that Cirrus is sort of out of the picture, and that you're going to replace the Bonanza with the Bonanza or something very much like a Bonanza. It just is crystal clear in his mind at that point, and he sits down, and he writes specifications to – in his own testimony – obtain, to purchase, a Bonanza. What I want to know is, who else

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drew that same conclusion, starting with you. Did you specifically draw the conclusion and direct Larry to develop bid specifications that would replace the Bonanza with the Bonanza or something very similar?

Rought: I came to the same conclusion that we were going [for] the Bonanza.

Nobles: And that Cirrus was, therefore, essentially out of the picture?

Rought: Yes.

Unfortunately, the change in direction was not conveyed clearly to a representative of Cirrus Design. When Floyd Gutowski from Cirrus called Steve Hurvitz to check on the status of the office's procurement process, Mr. Hurvitz told him the purchase was going to have to be competitively bid. But according to Mr. Gutowski, Steve Hurvitz left the impression that the Office of Aeronautics was interested in Cirrus submitting a bid.

Mr. Gutowski prepared a timeline detailing his contacts with officials at the Office of Aeronautics. In that document, Mr. Gutowski notes the following about his conversation with Steve Hurvitz during the week of June 20, 2005:

Steven Hurvitz informed me that the purchase of a SR22GTS had been cancelled by the Lieutenant Governor. He said that a future purchase of a Cirrus would have to go through the bid process. He apologized for the developments, and he asked me to submit a bid when it was issued. I told him Cirrus would respond to the bidding process. I asked that a bid request be mailed to my attention.

When Mr. Gutowski called Steve Hurvitz again during the week of July 11, 2005, to check on the status of the requests for bids, he was referred to Larry Myking. According to Mr. Gutowski, he subsequently called Mr. Myking and complained that Cirrus was having difficulty obtaining a copy of the bid specifications. According to Mr. Gutowski, Mr. Myking said, "...the bid had been written for a Beech Bonanza and it was not the responsibility of the State to see that Cirrus obtained a bid request."

Mr. Myking gave a different account during his sworn testimony. Mr. Myking said he had a telephone conversation with Mr. Gutowski on July 15, 2005, stating: "I explained to Floyd that our situation had changed from buying an aircraft to add to our fleet....Instead, our instructions were to replace one of our existing Bonanzas....the Bonanzas had served us well, and it was our intention to replace the Bonanza with a similar aircraft, was the term. I didn't say replace it with a Bonanza, I said replace it with a similar aircraft." Mr. Myking also said that he gave Mr. Gutowski the name and telephone number of a person at the Department of Administration who could provide Cirrus with a copy of the bid specification. Mr. Myking later told us he did not say, "...it was not the responsibility of the State to see that Cirrus obtained a bid request."

After being unable to reach the person at the Department of Administration, Mr. Gutowski said he contacted Mr. Myking on July 22, 2005, and "demanded" to see the bid specifications,

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and Mr. Myking faxed a copy to him. After reviewing the details in the bid information, Mr. Gutowski said he realized “the bid had been written for a Bonanza which negated a response to the bid request by Cirrus.” Responses to the bid were due no later than Monday, July 25, 2005.

The testimony presented to the Senate Transportation Committee and to OLA shows that Aeronautics officials made a clear change in direction during the procurement process—they first sought to purchase a Cirrus plane, and, when that plan was rejected, they sought to replace an older Beechcraft Bonanza with a new Beechcraft Bonanza. The testimony also shows they did not clearly communicate their change in direction to representatives of Cirrus.

2. The Office of Aeronautics used a competitive process to request bids for an airplane as required by Commissioner Molnau, but wrote product specifications so that only a Beechcraft Bonanza airplane would qualify. This led representatives of Cirrus to believe state officials acted improperly.

All of the testimony presented to the Senate Transportation Committee and to OLA was consistent—Commissioner Molnau directed the Office of Aeronautics to use a competitive bidding process to replace one of its 1978 Beechcraft Bonanza. The commissioner’s position was consistent with procurement “best practices” and recommendations made by OLA in prior reports on the state’s procurement process. Competitive bidding is not only fairer to potential bidders; in most cases, it will result in the private sector providing government with the best value in goods and services.

To achieve the benefits of competitive bidding, as a general rule, bid specifications should not be unnecessarily restrictive. Ideally, they should state the functions, tasks, and outcome an agency wants to achieve and not list detailed product features that are unnecessary requirements. This allows bidders to offer the widest range of products to an agency for consideration in awarding a bid to a vendor. However, state procurement procedures allow an agency to specify detailed product features—and even a particular product brand—when the agency has determined that the features or a specific product are necessary to satisfy the agency’s needs. In these instances, the state may still benefit from a competitive bidding process if there are multiple vendors that can provide the product or service. For example, an agency may decide that only a two-door Ford Escort will service its needs, but in making a detailed specification, it will still benefit from the fact that multiple vendors could offer bids that compete on price and specific services or features.

However, there are situations when an agency decides it needs a particular product or service, and there is only one vendor that provides it. State procurement laws and policies allow this to occur as a “single source” purchase, but it must be approved by the agency head. As noted above, that was the process proposed by the Office of Aeronautics when they wanted to purchase a Cirrus airplane. But their proposal was rejected by Commissioner Molnau.

While the impact of that decision was clear to officials at the Office of Aeronautics—they were now going to replace a Beechcraft Bonanza with a Beechcraft Bonanza and not purchase a Cirrus—they did not clearly communicate that fact to representatives of Cirrus. Rather, they

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indicated the office was being required to purchase an airplane through a competitive bidding process. That left representatives of Cirrus assuming they still had a chance to sell an airplane to the state. When they obtained the bid specifications, however, they saw that the Office of Aeronautics had written the specification in ways that excluded Cirrus and favored Beechcraft. They concluded that the procurement process had been “rigged” against them.

In their testimony to the Senate Transportation Committee and OLA, Aeronautics officials were clear—they did, in fact, write the bid specifications to ensure that only a Beechcraft Bonanza (or very similar airplane) would qualify. But, they do not think that means the procurement process was “rigged.”

We found no evidence of personal gain or any other inappropriate influence on the airplane procurement process. Therefore, to the degree the term “rigged” implies that corruption was involved, we do not think the evidence supports that characterization. On the other hand, we understand why Bill King thought the airplane procurement process was being inappropriately used and manipulated. In a conversation with us, Mr. King emphasized that he had extensive experience in the government procurement process as a city manager (before going to work for Cirrus). He argued that truly competitive procurement focuses on the tasks and functions that need to be performed, not a specific product preferred by a government official. In short, Mr. King said that the Office of Aeronautics should have written its airplane bid specifications more broadly so that more airplanes could have qualified.

We understand Mr. King’s point of view and agree that good procurement practice normally involves the least restrictive product specifications. However, we are not in a position to challenge the judgment of Mr. Myking and other MnDOT pilots that another Beechcraft Bonanza was the best replacement for the 1978 Beechcraft Bonanza. We simply think Aeronautics officials should have more clearly communicated to Mr. Gutowski or Mr. King that the bid specifications were going to exclude Cirrus from consideration, even though MnDOT was using a competitive bidding process. If clearer communications had occurred, the misunderstanding and this controversy might have been avoided.

3. The distribution of bid information added to the impression that the procurement process was being manipulated, and Cirrus was being unfairly treated.

In his testimony to the Senate Transportation Committee, Bill King said that Cirrus had a difficult time obtaining the bid specifications developed by the Office of Aeronautics. He interpreted the problem as intentional and part of MnDOT’s efforts to exclude Cirrus from the bidding process. Mr. King told the committee:

...when the time came to bid the aircraft, we were unable to secure the bidding documents from the department [of Transportation] until we finally demanded that the department release them to us.... It was upon receipt of the bid documents that we found that the last minute changes to the specifications had been redefined to exclude virtually every aircraft with the exception of the purchased aircraft.

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Some of the difficulty may have resulted from Cirrus' unfamiliarity with how bid information is distributed in the state's procurement process. The Department of Administration is responsible for soliciting bids from potential bidders. However, officials from the department acknowledged to the Senate Transportation Committee that they did make some mistakes. For example, Kent Allin, Director of Materials Management at the department, said that on July 18, 2005, the department published the solicitation with a title that did not coincide with the bid specifications. The solicitation's title indicated the procurement of a "New Cirrus SR22-GTS Aircraft" when the specifications described a Beechcraft Bonanza. Employees of the Department of Administration and MnDOT identified the error and corrected the mistake by issuing an addendum on July 19, 2005.

In our follow-up to the Senate hearing, we obtained additional information about the Department of Administration's mailing of bid materials to potential bidders. In addition to posting the solicitation on its website, the department sent bid materials to 12 companies. Larry Myking, from the Office of Aeronautics, identified one of these companies, Elliott Aviation, as a dealer interested in receiving the bid. He also told a MnDOT procurement official that he would be willing to work with the Department of Administration to identify other dealers. However, the Department of Administration used its vendor database and manual vendor contact list to select an additional 11 companies to send the bid materials. The vendor database contains information on companies that have self-registered with the department, including information on the products or services they provide. Using its vendor database, the department selected eight companies who had registered with the department as selling fixed wing aircraft. Further review revealed that of the 12 companies that received the bid materials, only three were aircraft dealers. The majority of the other companies provided aircraft maintenance and fuel.

Cirrus Design Corporation was not one of the 12 companies to receive the initial solicitation. MnDOT did not request that the Department of Administration send Cirrus Design a copy of the solicitation because Office of Aeronautics personnel did not believe a Cirrus aircraft would qualify as a replacement for the Beechcraft Bonanza. In addition, Cirrus Design was not formally registered as a vendor with the Department of Administration. Consequently, the department did not identify Cirrus Design as an interested vendor. However, the department did send the bid materials to Cirrus Flight Operations, a company with a similar name but no affiliation to Cirrus Design Corporation. Cirrus Flight Operations was selected from the manual vendor contact list, maintained by the Department of Administration.

After Cirrus officials learned of the Department of Administration's role in the bid solicitation process and contacted the department for information, they still experienced difficulties. The department employee who was overseeing the bid solicitation was out of work on a medical leave, and Cirrus finally obtained the bid materials from the Office of Aeronautics on July 22, 2005.

Closing Comments

In his testimony to the Senate Transportation Committee and discussion with OLA, Bill King used strong words to criticize officials at the Office of Aeronautics. As noted before, he said

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the procurement process had been “rigged,” though he did not allege corruption. He essentially said that state officials had manipulated the procurement process to get the airplane they wanted—a Beechcraft Bonanza—and to exclude Cirrus as a qualified bidder. While he was undoubtedly disappointed that Cirrus lost a sale, Mr. King told us he was mostly angry that Cirrus had been misled, and that state officials had called the bidding process competitive bidding when, in fact, it was closed to all but Beechcraft. While we would not use the word “rigged” to describe the procurement process, we understand Mr. King’s anger and frustration. Therefore, we think the apology offered to Mr. King and Cirrus by Commissioner Badgerow was appropriate.

MnDOT and Department of Administration officials cooperated fully with our review and were given an opportunity to review a draft of this report in advance of its release. Because we did not make recommendations to either department, we did not request a written response.

/s/ James R. Nobles

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